

300.38.070

ADEC File No.

BEFORE THE STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the matter of:
STATE OF ALASKA, DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Complainant,

vs.

FRONTIER EQUIPMENT COMPANY, an
Alaska corporation,

Respondent.

ADEC File #: 300.38.070

COMPLIANCE ORDER BY CONSENT

WHEREAS, the Complainant, the Alaska Department of Environmental Conservation ("ADEC"), and Respondent Frontier Equipment Company ("Respondent" or "Frontier Equipment") desire to resolve and settle a disputed matter and to avoid the uncertainty and expense of formal civil or administrative enforcement proceedings,

NOW, THEREFORE, it is hereby agreed as follows:

I. JURISDICTION

1. This Compliance Order by Consent ("Order") is entered into under the authority of ADEC under Title 44 and 46 of the Alaska Statutes ("AS"), including AS 44.46.020, AS 46.03.020, AS 46.03.760(e), AS 46.03.765, AS 46.03.850; Title 18 of the Alaska Administrative Code ("AAC"), including 18 AAC 95.160; and the settlement authority of the Attorney General under AS 44.23.020.

II. BACKGROUND

2. Frontier Equipment Company is an Alaska corporation located at 2040 Richardson Highway, North Pole, Alaska. Bernie Karl ("Karl") is the president of Frontier Equipment.

3. Frontier Equipment leases property from the Alaska Department of Natural Resources ("DNR") along Spine Road on the North Slope under DNR lease number ADL 50006 (hereinafter the "Site").

COMPLIANCE ORDER BY CONSENT (Frontier Equipment Company)
ADEC File No. 300.38.070

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CONSERVATION

4. The Site is a 38-acre, man-made gravel pad, commonly referred to as the "Frontier Base Camp." Historically, the Site has been used as a staging area in support of heavy construction related to oil and gas exploration and the Trans Alaska Pipeline System.

5. The following chronology sets forth significant events giving rise to this Order:

a. 1962 - The gravel pad on which the Site is located was constructed on land owned by the State of Alaska ("State") for the purposes of supporting oil exploration activities.

b. 1970 - A 5-year lease was issued to Frontier Rock and Sand, Inc. ("Frontier Rock").

c. 1972 - The original 5-year lease was relinquished and a 55-year lease was issued to Frontier Rock. The lease was subsequently assigned from Frontier Rock to John C. Miller.

d. July 30, 1981 - A site visit conducted by ADEC found "Solid waste ... being landfilled along the northern edge of the pad. The landfill was resulting in pad expansion into the wetland area. The pad and adjacent tundra contained large areas which had been saturated with oil and hydrocarbon products."

e. 1984 - John C. Miller assigned the lease of the Site to Frontier Equipment.

f. 1984-1993 - Ownership of Frontier Equipment changed hands numerous times until 1993, when Karl became the sole owner of Frontier Equipment.

g. 1992 - An investigation at the Site conducted by A.G. Midland Co., Inc. for Frontier Equipment confirmed the presence of diesel fuel contamination in soil at numerous locations at the Site; however, the sample locations were poorly documented.

h. February 15, 1996 - A letter from DNR to Frontier Equipment stated "In 1994 we requested that you send us a map that showed where each of these [1991] sample sites were located. We also requested that you set up a meeting with us to discuss what areas need to be cleaned up, the method of remediation, and a cleanup schedule. We have not received a response to these requests."

i. April 17, 1997 - A letter from DNR to Frontier Equipment documented a meeting that occurred on April 15, 1997 between Nancy Welch of the DNR and Karl of Frontier Equipment. As documented in the letter, Frontier Equipment had indicated to DNR that it would not do any additional sampling. However, the DNR letter stated that the additional sampling was not discretionary and must be conducted. According to the DNR letter, although Frontier claimed that it had removed all of the contaminated areas and placed the soil in biocells, DNR noted that the most contaminated areas were beneath the fuel tanks, which were still in place, and it was therefore "unlikely that the contaminated gravel under the tanks was removed...."

j. May 12, 1997 - Frontier Equipment sent a response to DNR's letter dated April 17, 1997. In the letter, Karl states that he "...see(s) no need for further sampling until we decide to sell the property" and explained that the fuel tanks are on pilings and the soil was removed from underneath the tanks using a backhoe and bobcat.

k. July 7, 1997 - DNR issued a Notice of Default of Lease Agreement-ADL 50006 to Frontier Equipment. The Notice gave Frontier Equipment sixty (60) days to remedy "petroleum hydrocarbon contamination in excess of State of Alaska cleanup standards" at the Site. The Notice of Default stated "[t]he discharge and failure to clean up the petroleum hydrocarbons on lease ADL 50006 is a violation of Condition 7 of the lease agreement" which states "the lessee shall not commit waste or injury upon the property leased herein." The Notice of Default contained the requirement to continue the investigation and cleanup of the Site to the satisfaction of DNR and ADEC.

l. August, 1997 - An Environmental Site Investigation was conducted by Oil Spill Technologies for Frontier Equipment. The report for this investigation concluded "It is apparent from both laboratory and field screening results that hydrocarbon contamination [e.g., Diesel Range Organics ("DRO") and Gasoline Range Organics ("GRO")] has been determined to exist above current ADEC limits at various locations [at the Site] which requires future cleanup." According to the report, specific areas where contaminated soil was found included the "Fueling Area, Fuel Storage Area, Western Parking Lot, Tower Area, Northeastern Pad Corner, and Waste Oil Drums Area." No sampling was conducted at the "Waste Oil Drums Area," but this area was listed as an area of concern in the report due to the "...sheer number of waste oil drums numbering in the thousands that were stored in this area in the past."

m. April 23, 1998 - DNR sends a letter to Frontier Equipment regarding the 1997 Notice of Default. The letter detailed the actions conducted by Frontier Equipment to address the requirements listed in the 1997 Notice of Default, noting that "Because action items (c) and (d) were not completed by the September 21, 1997 deadline, this lease remains in default. However in an effort to work with you to clean up this site, we are willing to grant you an additional 30 days from receipt of this letter to submit the cleanup plan and cleanup schedule."

n. March, 2001 - First Energy Services Company ("FESCO") purchased the stock of H.B. & R., Inc., who was a subtenant of Frontier Equipment at the Site. FESCO was concerned that H.B. & R. had liability associated with its use of the Site.

o. March 2001 - The State, FESCO, and H.B. & R., Inc. entered into a Site Cleanup Agreement and Release (the "Cleanup Agreement") pursuant to which FESCO would provide up to \$200,000 (the "FESCO funds") to fund an agreed-upon investigation and cleanup at the Site, in exchange for their release from liability for existing contamination at the Site. The agreement provided that FESCO would investigate and remediate an area at the Site nominated by Karl, described as two 6000-gallon tanks within the "fuel storage area."

p. November, 2001 - A Work Plan for Investigation and Remediation (the "Work Plan") was submitted to DNR and ADEC by FESCO's environmental consultant, Alta Geosciences.

q. January, 2002 - Following a period of comment and Work Plan revision, the Work Plan was approved by ADEC on January 9, 2002. The Work Plan activities included removal of the wood-crib containment around the tanks; emptying the tanks of residual product; inerting, cutting, cleaning, and transportation of the tanks to Anchorage, excavation of test pits; the collection of soil samples; and excavation of contaminated soils.

r. May, 2002 - Alta Geosciences began implementing work plan activities at the Site by draining the tanks of residual product. Before additional work could be completed, Karl refused to allow any further work to be conducted, preferring that the tanks be cleaned and reused rather than disposed of. FESCO reportedly presented several other options to Karl to move forward with the project or to conduct investigation at another area of the Site. However, no agreement could be reached and in 2003, FESCO turned over the unspent portion of the FESCO funds totaling \$118,638.12 to DNR (the "remaining FESCO funds"), which accepted the money in full satisfaction of H.B.&R./FESCO's obligations under the Cleanup Agreement.

s. August 22, 2003 - DNR issued a Notice of Default to Frontier Equipment, which replaced the 1997 Notice of Default. To cure the 2003 default, Frontier Equipment was required to install a High Density Polyethylene curtain liner around the perimeter of the pad; submit a report that identified areas where contaminated gravel was removed; submit a cleanup plan; implement the plan; and post a \$750,000 performance guaranty.

t. September 12, 2003 - Frontier Equipment appealed the 2003 Notice of Default.

u. November 20, 2006 - A meeting was held between Karl, DNR, and ADEC to discuss moving ahead with cleanup at the Site using the remaining FESCO funds, with the understanding that any additional costs required to complete the activities agreed upon at the meeting would be borne by Frontier Equipment. Due to Frontier Equipment's ongoing appeal of the Notice of Default, the activities discussed at the meeting were never completed and none of the remaining FESCO funds were expended.

v. November 5, 2008 - The DNR Commissioner denied Frontier Equipment's appeal, based on a finding that the Notice of Default was not a decision that could be appealed.

w. September 10, 2009 - A site visit by ADEC personnel observed petroleum hydrocarbon sheen on tundra ponds emanating from the northern and western portions of the Site.

x. January 6, 2010 - A meeting was held between Karl, DNR and ADEC to discuss moving forward with investigation and cleanup at the Site. It was agreed that the requirements for investigation and cleanup should be included in a Compliance Order by Consent signed between ADEC and Frontier Equipment.

III. ADEC ALLEGATIONS

6. Alleged Violations. Based on the facts set forth above, ADEC alleges:
- a. That releases or threatened releases of hazardous substances have occurred at the Site which is the subject of this Order.
 - b. That the releases are causing contamination of soils, surface water, and/or groundwater to or from the Site, and will continue to cause contamination unless the releases are remediated to applicable state cleanup levels.
 - c. That Respondent is a "person having control over [a] hazardous substance" and/or "owner [or] operator of a ... facility," as those terms are defined in AS 46.03.826 and therefore strictly liable 46.03.822(a)(1) and (2) for the costs of remediation, cleanup, and ADEC oversight expenses related to such release.
 - d. That Frontier Equipment violated one or more of the following provisions of law: AS 46.03.710; AS 46.03.740; AS 46.03.745; 18 AAC 75.315; 18 AAC 75.325; 18 AAC 75.335; 18 AAC 75.370; and 18 AAC 75.380.

IV. PURPOSE

7. Purpose. The Parties enter this Order to ensure that Respondent complies with its legal obligations and responsibilities for remediation and site cleanup at the Site under applicable federal, state, and local law as expeditiously as possible, including but not limited to Respondent's undertaking and satisfactory performance of necessary site assessment, site characterization, risk assessment, monitoring, removal, and site cleanup at the Site; to protect human health, safety, and welfare, and the environment; and ensure payment of all administrative fees, costs, and expenses incurred by the State as a result of the violations alleged herein, including but not limited to the detection, investigation, and attempted correction of such violations.

V. REQUIRED CORRECTIVE ACTION

8. Required Corrective Action. In order to address the alleged violations set forth above, Respondent agrees to fully perform and complete such remedial measures, corrective action, and/or work (collectively "Corrective Action"), as described below, by no later than the following specified dates, time being of the essence. If contamination is present beneath buildings or in contact with underground utilities, excavation may be halted upon written request to ADEC; however ADEC reserves the right, in its sole discretion, to require that tanks and equipment be moved in order to conduct the required remediation. The references to specific locations at the Site as discussed below are as shown on the Plot Plan sketch in the October 1997 Environmental Investigation Report prepared by Oil Spill Technology, Inc., and generally identified on Exhibit 1 attached hereto.

- a. June 30, 2011 - Installation of Vertical Barrier Liner. Install a vertical

barrier liner constructed of hydrocarbon proof material that is keyed into the permafrost to keep contaminants from migrating into the tundra surrounding the pad. Design specifications for the liner as well as the areas of the pad requiring the liner will be determined during development of the work plan for this activity. The installation of the liner must be conducted in accordance with an ADEC approved work plan.

b. December 31, 2011 - Investigation at Former Drum Storage Area. Unless data can be provided to ADEC to establish and nature and extent of contamination at the Former Drum Storage area, conduct an investigation at the Former Drum Storage area to include sampling of soil and groundwater (if encountered above tundra grade). Sample numbers and analyses must be specified in the work plan submitted to ADEC for review and approval. If contaminants in soil are found above the cleanup levels found in 18 AAC 75.341, Table A2 Method One- Petroleum Hydrocarbon Soil Cleanup Levels in the Arctic Zone ("Cleanup Levels"), then excavation will be conducted until field screening and/or analytical sampling indicates all soil with contaminants above Cleanup Levels has been removed. Analytical confirmation samples from the floor and sidewalls of the excavation must be collected following excavation to document remaining contaminant concentrations.

c. December 31, 2012 - Excavation and Treatment of Soil from the Former Fueling Area and Former Fuel Storage Area. Excavate hydrocarbon contaminated soil from the Former Fueling Area and the Former Fuel Storage Area, and treat the soil in accordance with an ADEC-approved work plan. Once field screening and/or analytical sampling indicates all soil with contaminant concentrations above Cleanup Levels has been removed, collect analytical confirmation samples from the floor and sidewalls of the excavation

d. December 31, 2013 - Excavation and Treatment of Soil from Western Parking Lot. Excavate hydrocarbon contaminated soil from the Western Parking Lot and treat the soil in accordance with an ADEC-approved work plan. Once field screening and/or analytical sampling indicates all soil with contaminant concentrations above Cleanup Levels has been removed, collect analytical confirmation samples from the floor and sidewalls of the excavation.

e. December 31, 2013 - Excavation and Treatment of Soil from the Tower Area. Excavate hydrocarbon contaminated soil from the Tower Area, and treat the soil in accordance with an ADEC-approved work plan. Once field screening and/or analytical sampling indicates all soil with contaminant concentrations above Cleanup Levels has been removed, collect analytical confirmation samples from the floor and sidewalls of the excavation.

f. December 31, 2013 - Excavation and Treatment of Soil from Northeast Pad Corner. Excavate hydrocarbon contaminated soil from the Northeast Pad Corner and treat the soil in accordance with an ADEC-approved work plan. Once field screening and/or analytical sampling indicates all soil with contaminant concentrations above Cleanup Levels has been removed, collect analytical confirmation samples from the floor and sidewalls of the excavation.

9. ADEC's Ability to Require Additional Information or Corrective Action. If at any time after the Effective Date of this Order, ADEC determines that additional information or Corrective Action is required of Respondent because the nature and extent of the contamination at

the Site is greater than previously known, including but not limited to the discovery of additional contaminants at the Site; or the actions required under Paragraph 8 (Required Corrective Action) are insufficient to achieve the goals and purposes of this Order or otherwise bring Respondent into compliance with applicable law, ADEC will request that Respondent provide such additional information or undertake such additional Corrective Action, including but not limited to additional site assessment, characterization, remediation, or cleanup, stating the reasons therefore in writing, and such request shall thereafter immediately take effect, be incorporated herein, and become enforceable under this Order.

10. Incorporation of Work Plans: When the written plans described in or required by this Order are approved by ADEC, including any approved modifications thereto, the plans will be automatically incorporated into this Order and will be fully enforceable as if they were part of the original Order.

11. Conditions Applicable to All Corrective Action Required by this Order. The following conditions shall apply to all Corrective Action work required under this Order:

a. All work required by this Order shall be performed in accordance with the requirements of all applicable federal, state and local laws, permits and regulations.

b. All work required by this Order must be undertaken and completed by an independent, third-party contractor unless otherwise approved in advance by ADEC in writing.

c. All work required by Order shall be performed by a "qualified person," as defined in 18 AAC 75.990, with expertise in hazardous substances, hazardous waste, and/or petroleum contamination site investigation, remediation, and cleanup unless otherwise approved in advance by ADEC in writing.

d. Upon retention, Respondent shall provide a copy of this Order to any contractor or consultant retained to perform or undertake work required under this Order. Respondent shall condition any such contract upon performance of the work in conformity with the terms of this Order.

e. Respondent shall provide a copy of this Order to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Order.

VI. RECOVERY OF ADMINISTRATIVE FEES, COSTS, AND EXPENSES

12. Administrative Fees, Costs, and Expenses. Respondent shall pay ADEC for all past and future of the administrative fees, legal fees, costs, and expenses incurred by the State of Alaska, including those of ADEC and the Alaska Department of Law ("ADOL"), in connection with the detection, investigation, attempted correction, and enforcement of the violations alleged above, including but not limited to (i) past and future cost recovery; (ii) the preparation and implementation of this Order, and (iii) future review by ADEC or ADOL of any proposed work plans, plans, amendments, reports, or other submissions made pursuant to the provisions of this Order.

VII. EFFECT OF ORDER

13. Duty to Comply. Until such time as this Order is terminated as provided in herein, Respondent shall fully comply with all the terms, conditions, and provisions of this Order, as well as any applicable federal, state, or local statute, regulation, ordinance, permit, or law relating to the contamination at the Site.

14. Covenant Not to Sue. Except as otherwise provided herein, and subject to the provisions of Paragraph 17 (ADEC's Reservation of Rights), if Respondent fully complies with the terms and conditions of this Order, ADEC shall not institute any administrative, legal, or other enforcement action against Respondent arising from the violations alleged in of this Order. This covenant is contingent upon Respondent's compliance with all the terms and conditions of this Order.

15. No Warranty by ADEC: No Relief from Compliance.

a. By entering into this Order, ADEC does not warrant, represent, or aver in any manner that Respondent's compliance with this Order will result in its compliance with the provisions of any applicable federal, state, or local laws, regulations, or permit conditions, including but not limited to Alaska's statutes, regulations, permits.

b. The parties further acknowledge and agree that ADEC's approval of any work plans, specifications, data, or reports submitted by or on behalf of Respondent does not constitute a warranty or representation of any kind that such work plans, specifications, data, or reports will achieve the necessary cleanup level required for the Site under applicable law.

16. Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for Respondent in any enforcement or other action by ADEC under this Order that it was (or would be) necessary for Respondent to halt or reduce its operations in order to maintain compliance with this Order, or that it is financially unable to perform any obligation under this Order or make any payment due under this Order.

17. ADEC's Reservations of Rights.

a. ADEC reserves all rights not expressly waived in this Order, including but not limited to the right to undertake any action against any person not identified as a Respondent(s) for the violation of any applicable federal, state, or local law.

b. ADEC reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Order and applicable law.

c. ADEC reserves the right to seek and obtain criminal sanctions against any person, including Respondent.

d. ADEC reserves the right to undertake any action against any person, including Respondent, in response to conditions which may present an imminent and substantial

endangerment to the public health, public safety, or the environment.

e. ADEC reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

f. Notwithstanding the covenant given above, and in addition to any other requirements of this Order, ADEC reserves the right to institute legal, administrative, or enforcement action against Respondent seeking to require it to perform additional cleanup, remedial, and/or response actions at the Site under this Order, and to pursue appropriate cost recovery in accordance with AS Title 44 and 46, and 18 AAC 75, under the following circumstances:

i. If the Corrective Action required under Section V (Required Corrective Action) fails or is otherwise insufficient to meet applicable state cleanup levels.

ii. If ADEC determines that action beyond the terms of this Order is necessary because a condition or activity at the Site presents an imminent or present danger to the public health or welfare, or results in or is likely to result in irreversible or irreparable damage to the natural resources of the environment of the state.

iii. In the event new information regarding contamination on, under, or from the Site becomes available regarding factors previously unknown to ADEC, including but not limited to the nature or quantity of hazardous substances at the Site, and ADEC determines that in light of this information, that further additional cleanup, remedial, and/or response actions are necessary at the Site to protect human health or the environment, and Respondent, after notice, fails to take the necessary action within a reasonable time.

iv. In the event the assumptions upon which the Corrective Action required under Section V (Required Corrective Action) for the Site do not prove to be true or accurate.

18. No Effect on Third Parties. This Order does not limit or affect the rights of ADEC against any third parties not a party to this Order, nor does it limit the rights of third parties not a party to this Order against Respondent, except as otherwise provided by law. This Order shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Order.

19. Not a Permit or Permit Modification. This Order is neither a permit nor a modification of an existing permit under any federal, state, or local laws or regulations, does not in any manner relieve Respondent of its responsibilities to comply with any applicable federal, state, and local laws, regulations, or permits.

VIII. STIPULATED PENALTIES

20. Stipulated Penalty Amounts. In addition to any other sums due or payable under

this Order, if Respondent fails to fully and timely comply with its obligations under this Order, Respondent shall pay stipulated penalties to the State on a per violation, per day basis in the amount of \$500.00 per day.

21. Payment of Stipulated Penalties. All stipulated penalties owed to the State under this Section shall be due and payable within thirty (30) days of Respondent's receipt from ADEC of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under this Order.

22. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order and stipulated penalties shall accrue regardless of whether ADEC has notified Respondent of a violation.

23. No Effect on Obligation to Comply. The payment of stipulated penalties shall not alter in any respect Respondent's obligation to fully comply with the requirements of this Order, including applicable law.

24. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid by Respondent until one of the following:

a. If the dispute is resolved by agreement or by a decision of ADEC that is not appealed as provided herein, Respondent shall pay accrued stipulated penalties determined to be owing to the State within thirty (30) days of the agreement or the receipt of ADEC's decision or order; or

b. If the dispute is appealed as provided herein and ADEC prevails in whole or in part, Respondent shall pay all accrued stipulated penalties determined on appeal to be owed to the State within thirty (30) days of receipt of the final decision or order on appeal.

25. Interest on Late Payment. If Respondent fails to pay stipulated penalties when due, Respondent shall pay interest on the outstanding balance due at the legal rate beginning on the day the stipulated penalties were due and continuing thereafter until fully paid.

26. Non-Exclusivity of Remedy. Stipulated penalties are not ADEC's sole or exclusive remedy for violations of this Order or applicable law. The Stipulated Penalties provided for in this Order shall be in addition to any other rights, remedies, or relief available to ADEC for Respondent's violation of this Order or applicable law; provided, however, that Respondent shall be allowed a credit for any stipulated penalties paid against any statutory assessment and/or penalties sought by ADEC or imposed on Respondent for such violation.

IX. FORCE MAJEURE

27. Definition of Force Majeure. Respondent shall perform the actions required

under this Order within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by a "Force Majeure Event." A "Force Majeure Event" is any event beyond the control of Respondent, its contractors, or any entity controlled by Respondent that delays the performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential Force Majeure Event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. A "Force Majeure Event" does not include Respondent's financial inability to perform any obligation under this Order, increased costs of performance of the terms and conditions of the Order, changed economic circumstances, or reasonably foreseeable seasonal fluctuations in the weather conditions of the region.

28. Required Notification for Force Majeure.

a. If an event occurs which Respondent believes constitutes a Force Majeure Event, the Respondent shall promptly notify ADEC orally and shall, with three (3) business days of oral notification, notify ADEC in writing in accordance with Paragraph 37 (Notices and Submissions) of the anticipated length and cause of the delay, the measures taken and/or to be taken by Respondent to prevent or minimize the delay, the timetable by which Respondent intends to implement these measures, and the amount of extension of time requested. Respondent shall adopt all reasonable measures to avoid or minimize such delay.

b. A request for an extension of time under this Section does not toll or extend any deadlines under this Order unless agreed to by ADEC in writing.

c. Failure to so notify ADEC shall render the applicability of Force Majeure under this Section void and of no effect as to the event in question, and shall waive Respondent's right to obtain an extension of time for its obligations based on such event.

29. Procedures for Extension. If ADEC determines, in its sole discretion, that a delay in performance is, or was, caused by a Force Majeure Event, ADEC shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Order shall apply, and Respondent shall have the burden of proving: (a) that the noncompliance at issue was caused by circumstances entirely beyond the control of Respondent and any entity controlled by Respondent, including its contractors and consultants; (2) that Respondent or any entity controlled by Respondent could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

30. Operations After Force Majeure Event. Respondent shall consult with ADEC to determine when to begin or resume the operations that had been affected by any Force Majeure Event.

31. Effect on Other Obligations. An extension of one compliance date based on a particular Force Majeure Event shall not automatically extend any other compliance date.

Respondent shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

VIII. GENERAL PROVISIONS

32. Costs Incurred by Respondent. All costs incurred by Respondent in carrying out the provisions of this Order shall be borne by Respondent, unless otherwise agreed to in writing with ADEC.

33. Breach.

a. Respondent understands that any failure to fully comply with or otherwise deviate from any of the terms, conditions, requirements, or deadlines set forth in this Order may, at ADEC's option, be deemed a material breach of this Order and may result in prompt legal action to enforce the terms, conditions, requirements, or deadlines of this Order as well as all other applicable legal and regulatory requirements.

b. If as a result of Respondent's breach of any of the terms and provisions of this order, ADEC seeks civil assessments, penalties, damages, or other relief from Respondent for the alleged violations described in this Order, any amounts paid under as stipulated penalties under this Order by Respondent shall offset any subsequent assessments or penalties for those alleged violations, but in no event shall a refund of any portion of any assessment, penalties, damages, or monetary amounts paid by Respondent under this Order be required.

34. Department Order. Respondent acknowledges that this Order constitutes a lawful order of ADEC for the purposes of AS Title 44 and 46 and AAC Title 18, including but not limited to AS 46.03.760, AS 46.03.765, and AS 46.03.850, 18 AAC 75, and 18 AAC 95.160, and for all other purposes. Respondent shall not institute any action challenging the validity of this Order or the authority of ADEC to enforce this Order, nor shall Respondent controvert or challenge in any subsequent proceedings initiated by the State the validity of this Order or the authority of ADEC to issue and enforce this Order.

35. Waiver of Rights and Procedures. By entering into this Order, Respondent acknowledges that with regard to the matters set forth herein, it is knowingly and voluntarily waiving the rights and procedures that would otherwise protect it in any formal administrative adjudicatory proceeding or any civil action in a court of law including the right to the filing of a notice of intent, to present evidence and witnesses on its behalf, to cross-examine ADEC's witnesses, to a jury trial, and to administrative and judicial review.

36. Indemnification. Respondent shall hold the State and its representatives, agents, and employees harmless and indemnify and defend the State against all claims, liabilities, losses, damages, and costs awarded or incurred, including attorney fees, and against all actions and claims, whether wrongfully brought or not, including but not limited to third-party claims (e.g., excluding tort claims made by the State and/or any state agency or entity) for injury to or death of persons and loss of or damage to property arising out of or in any manner connected with the incidents which give rise to this Order, except for any claims arising out of the sole negligence of

the State.

37. Notices and Submissions. Whenever, under the terms of this Order, notice is required to be given or a document or other information is required to be sent or submitted by one party to another, it shall be directed to the individuals as specified below, unless those individuals or their successors give notice of a change to the other party in writing. All notices and submissions shall be made by means of either (i) personal delivery; (ii) Federal Express, UPS, or USPS overnight delivery; (iii) certified mail, return receipt requested; (iv) electronic facsimile transmission (i.e., fax); or (v) electronic mail (i.e., email).

To ADEC:
Alaska Department of Environmental Conservation
Attn: William O'Connell
555 Cordova St.
Anchorage, AK 99501
Ph: 907.269.3057
Fax: 907.269.7649
Email: bill.oconnell@alaska.gov

With a copy (notices and demands only) to:

Alaska Department of Law – Environmental Section
Attn: Steven G. Ross, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
steven.ross@alaska.gov
Ph: 907.269.5274
Fax: 907.278.7022
Email: steven.ross@alaska.gov

To Respondent:

Mr. Bernie Karl
Frontier Equipment Company
c/o K&K Recycling Company
P.O. Box 58055
Fairbanks, Alaska, 99711
Ph: 907.488.1409
Fax: 907.488.4058
Email: bernie.karl@gmail.com

38. Modifications. Any modification to this Order must be made in writing and signed by ADEC and ADOL. No oral or written understanding between Respondent (including any consultant of Respondent) and ADEC (including its management and staff), or any other state agency (including its management and staff) shall alter or modify in any manner the requirements of this Order, including but not limited to the Corrective Action, or otherwise

relieve Respondent of any requirements or obligations of this Order, unless modified as provided in this paragraph.

39. State Not a Party. The State shall not be held as a party to any contract entered into by Respondent related to activities conducted pursuant to this Order.

40. Rule of Law/Jurisdiction. This Order shall be governed by and construed in accordance with the laws of the State of Alaska. Jurisdiction for any action arising under this Order shall be the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

41. Right of Entry and Access. Respondent shall allow ADEC's representatives unrestricted entry and access to the Site at reasonable times for the purpose of determining compliance with this Order, including but not limited to collecting samples, taking photographs, and conducting any other activities which ADEC deems reasonably necessary to determine compliance with this Order. ADEC shall inform Respondent at the time of entry or access of the presence of ADEC representatives on the property and Respondent may have a representative accompany ADEC's representative. However, nothing herein shall be construed to limit any statutory right of entry, access, or information gathering authority pursuant to any federal, state, or local law.

42. Document Retention. For a period of two (2) years after termination of this Order, Respondent shall maintain legible copies of all documentation of the records and reports required by this Order and shall provide any such records and reports to ADEC not more than seven (7) days after a written request by ADEC for such information.

43. Severability. It is the intent of the parties hereto that the terms and conditions of this Order are severable and should any part of this Order be declared by a court of law to be invalid and/or unenforceable, the other terms and conditions of this Order shall remain in full force and effect.

44. Rules of Construction. Any rule of construction (judicial or otherwise) that a document should be more strictly construed against the drafter thereof shall not apply to any term, condition, or provision of this Order.

45. Headings. The headings in this Order are for ease of reference only and shall not affect the interpretation of any of the terms and conditions contained herein.

46. No Waiver. A failure by ADEC to enforce any provision of this Order shall in no way imply a waiver of ADEC's right to insist upon strict performance of the same or other provision in the future.

47. Parties Bound. This Order shall apply and be binding upon Respondent, its agents, representatives, successors and assigns, and upon all persons, contractors and consultants acting on its behalf.

48. Property or Ownership Transfer. If Respondent transfers, sells, assigns, leases, or

subleases the property (or any portion thereof) described in Section II (Background), or transfers, sells, or assigns an ownership interest in any corporation, business, company, or other legal entity holding an interest in the property, to another party prior to Respondent's full and complete compliance with the provisions of this Order, Respondent shall incorporate a copy of this Order into the documents of transfer, sale, assignment, lease, or sublease, and shall provide in those documents that the new owner(s), assignee(s), lessee(s), or sublease(s) shall take the property and/or ownership interest subject to the provisions of this Order.

49. Termination. No earlier than two (2) years from the Effective Date of this Order, Respondent may request in writing that ADEC terminate this Order. In seeking ADEC's consent under this paragraph, Respondent shall demonstrate that:

a. Respondent has paid all monies, damages, civil penalties and/or assessments, stipulated penalties, and interest due under this Order;

b. Respondent is in full compliance with this Order;

c. There are no unresolved matters subject to the dispute resolution provisions of this Order; and

d. No enforcement action under this Order is pending.

50. No Admission of Liability. Respondent neither admits nor denies the allegations contained in this Order and nothing in this Order shall constitute or be construed as an admission of liability or wrongdoing on the part of Respondent arising out of the transactions or occurrences alleged herein.

51. Other Legal Obligations. This Order does not in any manner relieve Respondent of the duty to comply with the terms, conditions, requirements, duties, or obligations contained in any permit, other order, authorization which ADEC has issued or may issue to Respondent in the future, or otherwise required under any applicable state, federal, or local law, nor does it relieve in any manner Respondent's duty to comply with the terms of any contract, lease, or other agreement with the State.

52. Dispute Resolution.

a. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Order, unless otherwise expressly provided for in this Order.

b. The parties agree to make reasonable efforts to informally resolve all disputes at the staff level. A dispute subject to dispute resolution shall be considered to have arisen on the day one party delivers to the other party a written Notice of Dispute, in the manner specified in Paragraph 37 (Notices and Submissions). The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement of the parties.

c. If the dispute is unable to be informally resolved within the time frame specified under subparagraph (b) of this paragraph, Respondent shall have thirty (30) days to make a written request for the ADEC Commissioner (or the Commissioner's delegate) to formally resolve the dispute. The Commissioner (or Commissioner's delegate) will issue a final determination in writing. The written decision will be final for purposes of judicial review pursuant to Alaska Rule of Appellate Procedure 602(a)(2). The determination of the Commissioner (or the Commissioner's delegate) will remain in effect pending resolution of any judicial appeal unless a stay is sought and granted by the court on appeal.

d. In any dispute under this paragraph, Respondent shall bear the burden of proof that its position complies with the terms and conditions of this Order, and that Respondent is entitled to relief under applicable law.

e. The pendency of any dispute pursuant to this paragraph shall not extend, postpone, or affect in any way any obligation of Respondent under this Order unless ADEC agrees in writing.

f. Respondent's failure to seek resolution of a dispute under this Section shall preclude Respondent from raising any such issue as a defense to an action by ADEC to enforce any term, provision, requirement, or obligation arising under this Order.

53. Computation of Time. If a stated time period in the Order expires on a Saturday, Sunday, or State or Federal legal holiday, it shall be extended to include the next Business Day.

54. Time of the Essence. Time is of the essence as to each and every provision set forth in this Order.

55. Understanding of Terms/Voluntary Agreement. Each party acknowledges and represents that it has had the opportunity to consult with an attorney if the party so chose, has carefully read and understands the scope and effect of the provisions of this Order, and has voluntarily entered into this Order.

56. Effective Date. The effective date of this Order shall be the date of the last signature when the Order is signed by Respondent, ADEC, and ADOL.

57. Signatory Authority. Each individual signing this Order on a party's behalf certifies that he or she is authorized to enter into the terms and conditions of this Order and to execute and bind legally such party to this document.

58. Counterparts. This Order may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same document.

59. Entire Agreement. This is the entire agreement of the parties. There are no other oral or written understandings, representations, or agreements relating of the subject matter of this Order.

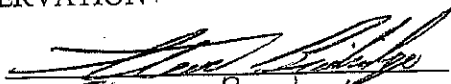
Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental Conservation
v. Frontier Equipment Company*

DATED: 02/03/2011

DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

By:


Steve Bainbridge

Division of Spill Prevention and Response

Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental Conservation,
v. Frontier Equipment Company*

DATED: 2/7/11

JOHN J. BURNS
ATTORNEY GENERAL

By: 

Steven G. Ross
Assistant Attorney General

Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental Conservation
v. Frontier Equipment Company*

DATED: 1-31-11

FRONTIER EQUIPMENT COMPANY

By:

Bernie Karl

Bernie Karl, President

ACKNOWLEDGMENT

I, Bernie Karl, hereby certify that I hold the position of President and that I am a responsible official for Frontier Equipment Company ("Frontier Equipment") and that I have the authority to enter into order on behalf of Frontier Equipment and to otherwise legally bind Frontier Equipment. I hereby acknowledge that I have freely and voluntarily entered into this agreement with the State of Alaska on behalf of Frontier Equipment.

SUBSCRIBED AND SWORN to before me this 31 day of January, 2011.

Paula M. Simpson

Notary Public, State of Alaska

My commission expires: 8/12/12

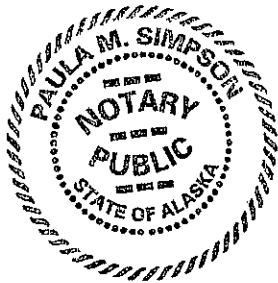
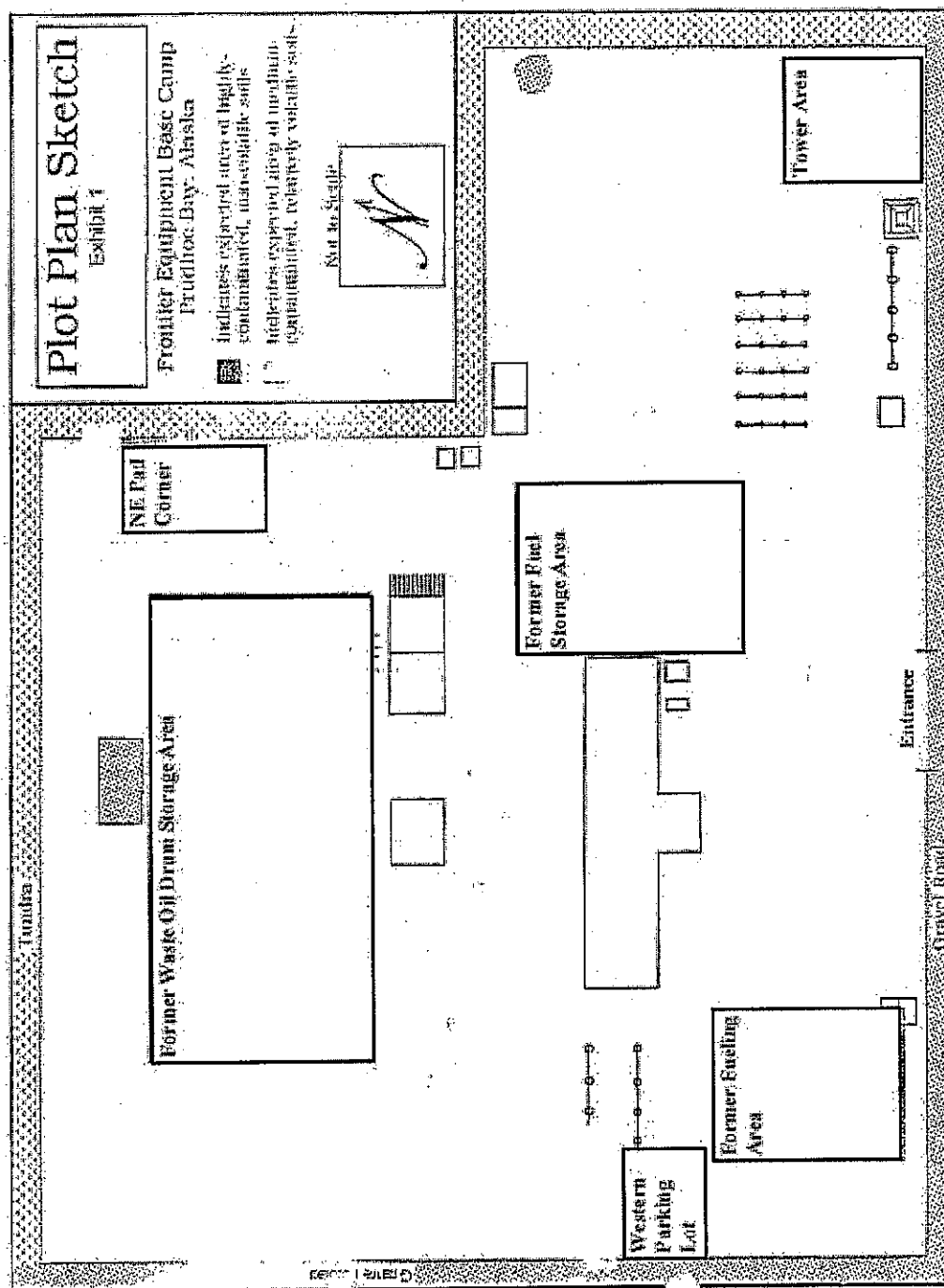


EXHIBIT 1



**Memorandum of Agreement
Between
Department of Natural Resources, Division of Mining, Land and Water
and
Frontier Equipment Company**

The Department of Natural Resources, Division of Mining, Land and Water, hereinafter called DNR, and Frontier Equipment Company, hereinafter called FEC, and jointly called parties, enter willingly into this Memorandum of Agreement for the expenditure of the remainder of the FESCO settlement funds.

Whereas the gravel pad subject to land lease ADL 50006, also known as the Frontier Base Camp pad (or Frontier pad), was and currently is contaminated by petroleum hydrocarbons; and

Whereas DNR holds \$118,638 originating from a settlement agreement between the State of Alaska and FESCO that is to be used to help further cleanup and restoration of contaminated soils on the Frontier pad; and

Whereas FEC is listed as the responsible party by the Alaska Department of Environmental Conservation (ADEC) for this contamination, and thus is considered by ADEC to be responsible to remediate the Frontier pad to acceptable cleanup levels;

Whereas FEC has entered into a Compliance Order By Consent (COBC) with ADEC; and

Whereas it is the goal of both parties to have the Frontier pad remediated and returned to a condition where the soil contamination does not exceed acceptable cleanup levels set by ADEC;

Now therefore, the parties agree to the following use of the remaining \$118,638 in FESCO settlement funds provided all of the conditions of this Memorandum of Agreement are met.

1. FEC will:

- a. Contract with a 3rd party environmental consultant approved by ADEC to oversee and manage the cleanup work.
- b. Provide an ADEC-approved cleanup work plan prepared by the 3rd party environmental consultant, that addresses the sampling, excavation and contaminated material treatment procedures and barrier liner installation. The cost of the preparation of the work plan will be paid by FEC with the conditions under #2c of DNR obligations.
- c. Provide any equipment, contracts, supplies or labor necessary to complete the work described in the cleanup work plan (including excavation, treatment and barrier liner installation).

- d. Pay for any costs of the 3rd party environmental consultant required by ADEC that exceed \$118,638.
- e. Abide by the terms of the COBC.
- f. Forward any 3rd party environmental consultant fee invoices to DNR for payment.

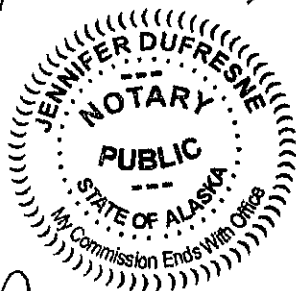
2. The DNR will:

- a. Pay for the costs of the 3rd party environmental consultant related to project oversight and management, including monitoring and testing to accomplish the ADEC-approved work plan. DNR will pay up to a maximum of \$118,638 worth of billed 3rd party consultant time which will be paid directly to the consultant upon monthly invoice billing by the consultant. The work to be funded under this paragraph must be accomplished within any timeline[s] specified in the COBC.
- b. Upon completion of the remedial work on the Frontier Pad and final cleanup approval by ADEC, the DNR will remove FEC from default on the lease related to the pad contamination.
- c. Reimburse FEC for the 3rd Party Environmental costs of developing the cleanup work plan (see paragraph 1. b.) from any remaining FESCO settlement funds after the clean up outlined in the COBC has been completed to the satisfaction of ADEC.
- d. Upon the DNR's discretion use any remaining FESCO settlement funds for future assessment and clean up necessary on this pad as deemed appropriate.
- e. Not reimburse FEC for any payments required by ADEC or Department of Law under the requirements of the COBC or applicable law.

Nothing in this MOA limits the future responsibility or liability of FEC for future or past contamination of Frontier Pad. This MOA only addresses the activities and obligations of the parties to complete the work defined in the COBC in order to use the FESCO settlement funds.

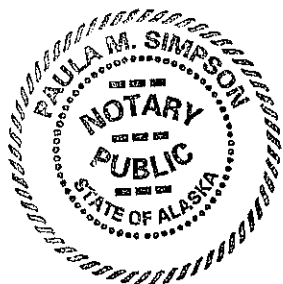
The parties hereby agree to and will perform the provisions of this agreement.

Wyn Meneffee 2/7/11
Wyn Meneffee, Acting Director of Division of Mining, Land and Water Date



Notary: Jennifer Dufresne
My commission expires: with office
Date: 2/7/11

Bernie Karl 1-31-11
Bernie Karl, Frontier Equipment Company Date



Notary: Paula M. Simpson
My commission expires: 8/12/2013
Date: 1/31/2011